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Person To Contact:
 , ID No.

Telephone Number:

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PLR-124607-10

Date:
November 29, 2012

Legend

Authority =
State A =

Dear :

This letter responds to a ruling letter request from your authorized representatives dated June 11, 2010 and subsequent correspondence requesting a ruling that Authority's income will continue to be excluded from gross income under § 115(1) of the Internal Revenue Code.

Facts and Representations

Authority received a ruling letter from the Service dated November , 20 , concluding that the income of the Authority is excluded from gross income for federal income tax purposes under § 115(1) of the Code.

In requesting the present ruling, Authority represents that it has made some changes in its operations. It expects to enter into certain transactions with non-governmental entities as described below. Authority requests this private letter ruling to confirm that these operational changes will not adversely affect the exclusion of the income of Authority from gross income for federal income tax purposes under § 115(1) of the Code.

Authority is a nonprofit corporation organized under the not-for-profit corporation law of State A. Authority was created to coordinate the operation of electric generation resources and the purchase and sale of electric power on behalf of its members. The members of Authority each own and operate publicly-owned electric generation and

transmission facilities for the purpose of providing electric power to consumers in their service areas. The members buy and sell electric power in the wholesale market. Authority represents that all current members are political subdivisions of their respective States. All future members must be either political subdivisions or entities the income of which is excluded from gross income under § 115 of the Code.

Authority is governed by a board of directors. Members are divided into two classes on the basis of size, as measured by the member's power generation and purchased power capacity. Depending on the class to which it is assigned, a member may nominate either one or three directors. Directors must be officers or employees of a member. All directors may be removed with or without cause by the majority vote of the members.

In order to insure that an adequate supply of electric capacity is available for Authority's members in case of an unexpected event and to promote cost effective participation by its members in the wholesale energy market, Authority buys electricity or electric capacity (collectively electricity) from one or more members (or third parties) for sale to one or more members (or third parties). Authority also performs other services for its members relating to managing their electrical energy resources. In conducting all of these activities, Authority performs for its members on a consolidated basis activities that the members have historically performed for themselves or that would have been entered into by Authority's members if Authority did not exist. In order to provide financial support to Authority, each member is required to make a substantial capital commitment to Authority. In addition, each member is required to provide a guarantee to Authority in the form of cash, trade guarantees and bank guarantees.

In addition to providing services to its members, Authority enters into resource management agreements with non-member States, political subdivisions, and entities the income of which is excluded from gross income under § 115(1) of the Code (referred to herein as qualified governmental partners). Some qualified governmental partners enter into these agreements as an interim step prior to becoming a member of Authority. A resource management agreement with a qualified governmental partner permits Authority to market electricity of the qualified governmental partner to Authority's members or third parties and to purchase needed electricity for the qualified governmental partner from Authority's members or third parties. As in the case of the activities Authority performs for its members, the activities performed by Authority under the resource management agreements are ones the qualified governmental partners could perform themselves. Authority's activities enable its qualified governmental partners to sell surplus electricity and purchase electricity more economically.

In addition to the energy trading activities described above, which may involve buying electricity from and selling electricity to nongovernmental third parties at market rates, Authority proposes to engage in two types of transactions with nongovernmental entities, as described below.

To gain the advantages of the efficiencies and lower power costs that larger generating plants provide, public power utilities may seek to purchase fractional ownership of large electric generating facilities. The owners of these jointly-owned facilities (or the applicable regulatory bodies) may require that certain services be provided by a single entity. If one or more of Authority's members or qualified governmental partners is a co-owner of a jointly-owned electric generating facility, Authority may enter into an agreement to coordinate day-to-day operations of that facility, or to manage and schedule the electricity produced at that facility. In such an arrangement, the other co-owners might include public utilities, cooperatives, and investor owned utilities. Authority does not expect to provide services to a jointly-owned facility unless its members or qualified governmental partners own a substantial percentage of the facility. Authority would provide services to the co-owners of a jointly-owned facility at an arm's length, fair market value price. Authority represents that its primary purpose in providing services to jointly-owned facilities is to assist one or more of its members (or qualified governmental partners) by managing the resources of a co-owned facility. Moreover, the operating and management services to be provided by Authority in the case of such jointly-owned facilities are services that a member co-owner (or qualified governmental partner co-owner) itself could provide.

Another situation in which Authority proposes to provide services to nongovernmental entities arises when a member public utility (or qualified governmental partner) has a large industrial customer that has its own internal steam and electric power generating units. If a customer has excess power it wishes to sell, the customer often will ask its local utility for assistance in accessing the wholesale market, such as transmission, scheduling, and transactional services. If the public utility has outsourced these wholesale services to Authority, the utility may ask Authority to provide these wholesale services to its customer. In this situation, Authority is providing services that the public utility otherwise would have performed. In addition, these transactions benefit Authority and its members by providing an additional source of power.

With respect to the proposed transactions with nongovernmental entities, Authority represents that any benefit to nongovernmental entities involved in the transactions is no different from the benefit that would be provided if the public utility itself provided the service.

All members of Authority must be political subdivisions or public utilities described in § 115 of the Code. Authority represents that its Bylaws will be clarified to provide that a member must be a State, a political subdivision, or an entity whose income is excluded from gross income under § 115 of the Code. The net revenues of Authority are distributed monthly to the members less a reasonable retention for Authority's working capital needs. Authority makes further distributions to the members to the extent the retention amount is not required, typically quarterly, but in no event less than annually. The Articles of Incorporation of Authority provide that no income of Authority shall inure

to the benefit of any director, officer or trustee of Authority or to any private person. Upon dissolution of Authority, any remaining assets will be distributed to the members in proportion to each member's capital account balance.

Law and Analysis

Section 115(1) of the Code provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

In Rev. Rul. 77-261, 1977-2 C.B. 4, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under section 115(1). The ruling indicated that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign to properly conduct.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the Service determined that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under § 115 of the Code. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

Ruling

Based solely on the facts and representations submitted by Authority, we conclude that the income of Authority is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, or to an entity the income of which is excluded under § 115(1). Consequently, we rule that Authority's income will continue to be excluded from gross income under § 115(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Sylvia F. Hunt
Assistant Branch Chief
(Tax Exempt & Government Entities)